

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA)	
)	
v.)	CRIMINAL NO. 03-296-A
)	
YONG KI KWON,)	
)	
Defendant.)	

PLEA AGREEMENT

Paul J. McNulty, United States Attorney for the Eastern District of Virginia, and Gordon D. Kromberg and David H. Laufman, Assistant United States Attorneys, and John T. Gibbs, Department of Justice Trial Attorney, and the defendant's counsel, Mark MacDougall and Heather Pellegrino, pursuant to Rule 11(c) of the Federal Rules of Criminal Procedure, have entered into an agreement, the terms and conditions of which are as follows:

1. The defendant, YONG KI KWON, agrees to plead guilty to Counts One and 13 of the pending indictment and to the charge in the Criminal Information. Count One of the Indictment charges the defendant with conspiracy to commit an offense against the United States, in violation of Title 18, United States Code, Section 371. The maximum penalty for this offense is a term of five years of imprisonment, a fine of \$250,000, full restitution, a special assessment, and three years of supervised release. Count 13 of the indictment charges the defendant with transfer of a firearm for use in a crime of violence, in violation of Title 18, United States Code, Section 924(h). The maximum penalty for this offense is a term of ten years of imprisonment, a fine of \$250,000, full restitution, a special assessment, and three years of supervised release. The charge in the Criminal Information charges the defendant with use and discharge of a firearm

during and in relation to a crime of violence, in violation of Title 18, United States Code, Section 924(c). The maximum penalty for this offense is a mandatory minimum term of imprisonment of 10 years, a maximum term of life in prison, a fine of \$250,000, full restitution, a special assessment, and five years of supervised release. The defendant is aware that these supervised release terms are in addition to any prison terms the defendant may receive, and that a violation of a term of supervised release could result in the defendant being returned to prison for the full term of supervised release.

The defendant is also aware this case is governed by 18 U.S.C. §§ 3143(a)(2) and 3145(c). These provisions provide that a judicial officer shall order that a person who has pled guilty to an offense of this kind be detained unless there are exceptional reasons why such person's detention would not be appropriate.

2. Before sentencing in this case, the defendant agrees to pay a mandatory special assessment of one hundred dollars (\$100.00) per count of conviction.

3. Restitution does not appear to be applicable in this case.

4. The defendant is aware that the defendant's sentence will be imposed in accordance with the Sentencing Guidelines and Policy Statements. The defendant is aware that the Court has jurisdiction and authority to impose any sentence within the statutory maximum set for the offenses to which the defendant pleads guilty. The defendant is aware that the Court has not yet determined a sentence. The defendant is also aware that any estimate of the probable sentencing range under the sentencing guidelines that the defendant may have received from the defendant's counsel, the United States, or the probation office, is a prediction, not a promise, and is not binding on the United States, the probation office, or the Court. The United States makes no

promise or representation concerning what sentence the defendant will receive, and the defendant cannot withdraw a guilty plea based upon the actual sentence. The defendant is aware that Title 18, United States Code, Section 3742 affords a defendant the right to appeal the sentence imposed. Acknowledging all this, the defendant knowingly waives the right to appeal any sentence within the maximum provided in the statute(s) of conviction (or the manner in which that sentence was determined) on the grounds set forth in Title 18, United States Code, Section 3742 or on any ground whatever, in exchange for the concessions made by the United States in this plea agreement. This agreement does not affect the rights or obligations of the United States as set forth in Title 18, United States Code, Section 3742(b).

5. The United States will not further criminally prosecute defendant in the Eastern District of Virginia for the specific conduct described in the indictment, criminal information, or statement of facts. Therefore, defendant has immunity only for crimes based on facts set forth in the indictment, criminal information or statement of facts. After the Court's acceptance of this plea, the United States will move to dismiss the remaining counts of the indictment against this defendant. Except where specifically noted, this plea agreement binds only the United States Attorney's Office for the Eastern District of Virginia and the defendant; it does not bind any other prosecutor in any other jurisdiction.

6. The United States agrees that, as of the date of this plea agreement, the defendant has demonstrated acceptance of responsibility for the offenses to which he pleads guilty. Provided that his acceptance of responsibility continues through the date of sentencing, the United States agrees that a downward adjustment of two levels will be appropriate as provided in Section 3E1.1(a) of the Sentencing Guidelines and Policy Statements. The United States further agrees

that if the defendant qualifies for the downward adjustment pursuant to Section 3E1.1(a), and if the base offense level prior to the operation of Section 3E1.1(a) is 16 or greater, then the United State will notify the Court by motion stating that the defendant has assisted authorities in the investigation or prosecution of his own misconduct by timely notifying authorities of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the court to allocate their resources efficiently, so that defendant's offense level will be reduced by an additional level.

7. The defendant represents to the Court that defendant is satisfied that defendant's attorney has rendered effective assistance. Defendant understands that by entering into this agreement, defendant surrenders certain rights as provided in this agreement. Defendant understands that the rights of criminal defendants include the following:

a. If the defendant persisted in a plea of not guilty to the charges, defendant would have the right to a speedy jury trial with the assistance of counsel. The trial may be conducted by a judge sitting without a jury if the defendant, the United States, and the judge all agree.

b. If a jury trial is conducted, the jury would be composed of twelve laypersons selected at random. The defendant and defendant's attorney would assist in selecting the jurors by removing prospective jurors for cause where actual bias or other disqualification is shown, or by removing prospective jurors without cause by exercising peremptory challenges. The jury would have to agree unanimously before it could return a verdict of either guilty or not guilty. The jury would be instructed that the defendant is presumed innocent, that it could not convict

the defendant unless, after hearing all the evidence, it was persuaded of the defendant's guilt beyond a reasonable doubt, and that it was to consider each charge separately.

c. If a trial is held by the judge without a jury, the judge would find the facts and, after hearing all the evidence and considering each count separately, determine whether or not the evidence established the defendant's guilt beyond a reasonable doubt.

d. At a trial, the United States would be required to present its witnesses and other evidence against the defendant. The defendant would be able to confront those witnesses and defendant's attorney would be able to cross-examine them. In turn, the defendant could present witnesses and other evidence in defendant's own behalf. If the witnesses for the defendant would not appear voluntarily, defendant could require their attendance through the subpoena power of the Court.

e. At a trial, the defendant could rely on a privilege against self-incrimination to decline to testify, and no inference of guilt could be drawn from the refusal to testify. If the defendant desired to do so, the defendant could testify in the defendant's own behalf.

8. The defendant agrees to cooperate fully and truthfully with the United States, and provide all information known to the defendant regarding any criminal activity. In that regard:

a. The defendant agrees to testify truthfully and completely at any grand juries, trials or other proceedings.

b. The defendant agrees to be reasonably available for debriefing and pre-trial conferences as the United States may require.

c. The defendant agrees to provide all documents, records, writings, or materials of any kind in the defendant's possession or under the defendant's care, custody, or control relating directly or indirectly to all areas of inquiry and investigation.

d. The defendant agrees that, upon request by the United States, the defendant will voluntarily submit to polygraph examinations to be conducted by a polygraph examiner of the United States' choice. The defendant stipulates to the admissibility of the results of this polygraph examination if later offered in a proceeding to determine the defendant's compliance with this plea agreement.

e. The defendant agrees that the accompanying Statement of Facts is limited to information to support the plea. The defendant will provide more detailed facts relating to this case during ensuing debriefings.

f. The defendant is hereby on notice that the defendant may not violate any federal, state, or local criminal law while cooperating with the government, and that the government will, in its discretion, consider any such violation in evaluating whether a downward departure is appropriate.

g. Nothing in this agreement places any obligation on the government to seek the defendant's cooperation or assistance.

9. a. The United States agrees not to use any truthful information provided pursuant to this agreement against the defendant in any other criminal prosecution against the defendant in the Eastern District of Virginia. Pursuant to Section 1B1.8 of the Sentencing Guidelines, no truthful information that the defendant provides pursuant to this agreement will be used to enhance the defendant's guidelines range. The United States will bring this plea agreement and

the full extent of the defendant's cooperation to the attention of other prosecuting offices if requested.

b. Nothing in this plea agreement restricts the Court's or Probation Office's access to information and records in the possession of the United States. Further, nothing in this agreement prevents the government in any way from prosecuting the defendant should the defendant provide false, untruthful, or perjurious information or testimony. Moreover, nothing in this agreement prevents the government from using such information in furtherance of any forfeiture action, whether criminal or civil, administrative or judicial.

c. The United States Attorney's Office for the Eastern District of Virginia will not contact any other state or federal prosecuting jurisdiction and voluntarily turn over truthful information that the defendant provides under this agreement to aid a prosecution of the defendant in that jurisdiction. Should any other prosecuting jurisdiction attempt to use truthful information the defendant provides pursuant to this agreement against the defendant, the United States Attorney's Office for Eastern District of Virginia agrees, upon request, to contact that jurisdiction and ask that jurisdiction to abide by the immunity provisions of this plea agreement. The parties understand that the prosecuting jurisdiction retains the discretion over whether to use such information.

10. This plea agreement is not conditioned upon charges being brought against any other individual. This plea agreement is not conditioned upon any outcome in any pending investigation. This plea agreement is not conditioned upon any result in any future prosecution which may occur because of the defendant's cooperation. This plea agreement is not conditioned upon any result in any future grand jury presentation or trial involving charges resulting from this

investigation. This plea agreement is conditioned upon the defendant providing full, complete and truthful cooperation.

11. The parties agree that the United States reserves its option to seek any departure from the applicable sentencing guidelines, pursuant to Section 5K of the Sentencing Guidelines and Policy Statements, or Rule 35(b) of the Federal Rules of Criminal Procedure, if in its sole discretion, the United States determines that such a departure is appropriate. The parties agree that in cases where the United States does file such a motion, the United States reserves its option to file a further motion under 18 U.S.C. § 3553(e) to permit a departure under any applicable mandatory minimum sentence, if in its sole discretion the United States determines that such a further motion is appropriate.

12. The accompanying Statement of Facts signed by the defendant is hereby incorporated into this plea agreement. Defendant adopts the Statement of Facts and agrees that the facts therein are accurate in every respect and that had the matter proceeded to trial, the United States would have proved those facts beyond a reasonable doubt.

13. If the defendant fails in any way to fulfill completely all of the obligations under this plea agreement, the United States may seek release from any or all its obligations under this plea agreement.

14. If the defendant fails to fulfill the obligations under this plea agreement, the defendant shall assert no claim under the United States Constitution, any statute, Rule 410 of the Federal Rules of Evidence, Rule 11(f) of the Federal Rules of Criminal Procedure, or any other federal rule, that defendant's statements pursuant to this agreement or any leads derived therefrom, should be suppressed or are inadmissible.

15. Any alleged breach of this agreement by either party shall be determined by the Court in an appropriate proceeding at which the defendant's disclosures and documentary evidence shall be admissible and at which the moving party shall be required to establish a breach of the plea agreement by a preponderance of the evidence. The proceeding established by this paragraph does not apply, however, to the United States' decision whether to file a motion based on "substantial assistance" as that phrase is used in Rule 35(b) of the Federal Rules of Criminal Procedure and Section 5K1.1 of the Sentencing Guidelines and Policy Statements. The defendant agrees that the decision whether to file such a motion rests in the United States' sole discretion.

16. The defendant hereby waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act, 5 U.S.C. § 552a.

17. This written agreement constitutes the complete plea agreement between the United States, the defendant, and the defendant's counsel. The United States has made no promises or representations except as set forth in writing in this plea agreement. The defendant acknowledges that no threats have been made against the defendant and that the defendant is pleading guilty freely and voluntarily because the defendant is guilty. Any modification of this

plea agreement shall be valid only as set forth in writing in a supplemental or revised plea agreement signed by all parties.

18. Defendant's Signature: I hereby agree that I have consulted with my attorney and fully understand all rights with respect to the pending criminal indictment or criminal information. Further, I fully understand all rights with respect to the provisions of the Sentencing Guidelines and Policy Statements which may apply in my case. I have read this plea agreement and carefully reviewed every part of it with my attorney. I understand this agreement and I voluntarily agree to it.

Date: _____

YONG KI KWON
Defendant

19. Defense Counsel Signature: I am counsel for the defendant in this case. I have fully explained to the defendant the defendant's rights with respect to the pending indictment or criminal information. Further, I have reviewed the provisions of the Sentencing Guidelines and Policy Statements and I have fully explained to the defendant the provisions of those Guidelines which may apply in this case. I have carefully reviewed every part of this plea agreement with

the defendant. To my knowledge, the defendant's decision to enter into this agreement is an informed and voluntary one.

Date: _____

Mark MacDougall
Heather Pellegrino
Counsel for Defendant

Respectfully submitted,

Paul J. McNulty
United States Attorney

By: _____

Gordon D. Kromberg
David H. Laufman
Assistant United States Attorneys

John T. Gibbs
Trial Attorney
Counterterrorism Section, Criminal Division
United States Department of Justice

APPROVED:

Date: _____

Plea Agreement (Revised April 30, 2003)

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA)	
)	
v.)	CRIMINAL NO. 03-296-A
)	
YONG KI KWON,)	
)	
Defendant.)	

STATEMENT OF FACTS

Were this matter to go to trial, the United States of America would prove the following facts beyond a reasonable doubt:

1. Beginning in or about January 2000 and continuing thereafter up to May 8, 2003, within Fairfax County, Virginia, and elsewhere, defendant YONG KI KWON unlawfully, willfully, and knowingly conspired with others to begin, provide for, prepare a means for, and take part in military expeditions and enterprises to be carried on from the United States against the territory and dominion of foreign states, districts and peoples with whom the United States was at peace, in violation of Title 18, United States Code, Section 960, which conspiracy included to enlist and engage with intent to serve in armed hostility against the United States, in violation of Title 18, United States Code, Section 2390; In furtherance of this conspiracy, on or about September 17, 2001, YONG KI KWON falsely claimed on his Pakistani visa application that the purpose of his upcoming trip to Pakistan was to attend a wedding.

2. On or about January 10, 2000, in Fairfax County, YONG KI KWON, unlawfully and knowingly aided and abetted the transfer of an AK-47-style rifle by Hammad Abdur-Raheem to Caliph Basha Ibn Abdur-Raheem, knowing that such firearm would be used to begin, provide

for, prepare a means for, and take part in military expeditions and enterprises to be carried on from the United States against the territory and dominion of foreign states, districts and peoples with whom the United States was at peace, in violation of Title 18, United States Code, Section 960, a crime of violence as defined in Title 18, United States Code, Section 924(c)(3).

3. In or about April or May 2001, in Fairfax County, Virginia, YONG KI KWON knowingly used and discharge a firearm during, in relation to, and in furtherance of crimes of violence for which he may be prosecuted in a court of the United States. In specific, in or about April or May, 2001, at a firing range, YONG KI KWON fired a semi-automatic AK-47 style rifle in relation to and in furtherance of a conspiracy to take part in military expeditions and enterprises to be carried on against the territory of India, a country with whom the United States was at peace, in violation of Title 18, United States Code, Sections 371 and 960.

4. Starting in or about January 2000, YONG KI KWON agreed with others to prepare for violent *ji had* on behalf of Muslims in Kashmir, Chechnya, and other countries and territories, against countries, governments, military forces, and peoples that the conspirators believed to be the enemies of Islam. The defendant and his conspirators agreed to conduct their preparation for *ji had* in secrecy and to refuse to disclose any information about their activities if asked by law enforcement.

5. For the purpose of preparing to fight in Kashmir, Chechnya, and elsewhere around the world, YONG KI KWON and other conspirators trained in small-unit military tactics on private property near Fredericksburg, Virginia. They used paint-ball weapons and equipment to practice small-unit military tactics and simulate actual combat in preparation for violent *ji had*.

6. YONG KI KWON understood that in 2000, Ibrahim Al-Hamdi and Randall Todd Royer traveled from the United States to join *Lashkar-e-Taiba* at its camps in Pakistan. KWON understood that while there, Al-Hamdi and Royer used various weapons, including small arms, machine guns, and fired at Indian positions in Kashmir. YONG KI KWON knew that, after Al-Hamdi and Royer returned to Virginia in 2000, each encouraged other conspirators to go to Pakistan to serve with Lashkar-e-Taiba as well.

7. In or about June 2000, at a dinner at the home of Ibrahim Hamdi, Randall Todd Royer described to YONG KI KWON and others his experience serving with the *Lashkar-e-Taiba* in Pakistan. At that dinner, Unindicted Conspirator #1 instructed KWON and the conspirators gathered there not to discuss elsewhere what Royer said regarding his experiences with the *Lashkar-e-Taiba* in Pakistan. After Ibrahim Al-Hamdi returned from Pakistan in September 2000, YONG KI KWON heard about Al-Hamdi's experiences with the Lashkar-e-Taiba as well.

8. On or about September 15, 2001, YONG KI KWON hosted a meeting at his house in Fairfax, Virginia. At the meeting, Unindicted Conspirator #1 told YONG KI KWON and the others gathered there that the mullah or emir of Afghanistan had called for Muslims to come to Afghanistan to help fight in their defense. Based on the comments of Unindicted Conspirator #1, YONG KI KWON knew that the enemy against whom help was needed was the United States.

9. At the meeting, one of the conspirators said that one cannot simply go to Afghanistan to fight without having previous training or combat experience. The conspirators discussed that Lashkar-e-Taiba was a good place to receive combat training in order to later be able to fight in Afghanistan. Randall Royer advised the conspirators that he had a contact number for Lashkar-e-Taiba. KWON expressed his willingness to go to Pakistan and then Afghanistan to defend the

Taliban against possible attacks by U.S. forces or to Chechnya, Kashmir or other locations to engage in jihad.

10. On or about September 15, 2001, YONG KI KWON met with Randall Todd Royer and other conspirators at a 7-11 store in Virginia in order for Royer to facilitate their contact with Lashkar-e-Taiba in Pakistan. Royer purchased a long-distance telephone card at the store and used it to telephone his Lashkar-e-Taiba contact in Pakistan with the physical descriptions of YONG KI KWON and two other conspirators as three individuals who wished to join Lashkar-e-Taiba. Royer passed on to his Lashkar-e-Taiba contact that YONG KI KWON's kunya, or alias, was "Abu Ubaydah."

11. On or about September 17, 2001, Unindicted Conspirator #1 advised YONG KI KWON and Khwaja Mahmood Hasan how to reach the Lashkar-e-Taiba camp undetected.

12. On or about September 17, 2001, YONG KI KWON and Khwaja Mahmood Hasan traveled to the Pakistani Embassy in Washington, D.C. to apply for visas to travel to Pakistan. Both falsely claimed on their Pakistani visa applications that the purpose of their trips was to attend a wedding.

13. On or about September 18, 2001, YONG KI KWON, Khwaja Mahmood Hasan, and Masoud Ahmad Khan drove to Pennsylvania to spend the night at the home of Mohammed Aatique. The next day, YONG KI KWON and Khwaja Mahmood Hasan returned to Virginia to make final preparations for their trip to Pakistan. On or about September 20, 2001, YONG KI KWON and Khwaja Mahmood Hasan rode to Dulles Airport to board their flights for Pakistan via New York and Manchester, England. They arrived in Karachi, Pakistan, on or about September 22, 2001.

14. In or about early October 2001, YONG KI KWON, Khwaja Mahmood Hasan, and Masoud Ahmad Khan traveled with a Lashkar-e-Taiba operative to a Lashkar-e-Taiba camp near Muzafrabad, Pakistan. While there, they fired various military weapons. Furthermore, YONG KI KWON learned that, in 2001, Seifullah Chapman served at the Lashkar-e-Taiba camp as well.

15. While at the Lashkar-e-Taiba camps, YONG KI KWON heard reports of the American attacks on Afghanistan. After his second phase of training, KWON learned of the degree of success of American forces. KWON further realized that actually getting to Afghanistan or Chechnya to fight was not logistically feasible and given the success of American forces was in any event futile with regard to Afghanistan. KWON further learned that Lashkar-e-Taiba would not send him to fight in Kashmir and that he did not know how to get to Chechnya. At least in part as a result of these factors, YONG KI KWON decided to leave the Lashkar-e-Taiba camp and not then engage in violent jihad.

Respectfully submitted,

Paul J. McNulty
United States Attorney

By:

Gordon D. Kromberg
David H. Laufman
Assistant United States Attorneys

John T. Gibbs
Trial Attorney
Counterterrorism Section
Criminal Division, U.S. Department of Justice

After consulting with my attorney and pursuant to the plea agreement entered into this day between the defendant, and the United States, I hereby stipulate that the above Statement of

Facts is true and accurate, and that had the matter proceeded to trial, the United States would have proved the same beyond a reasonable doubt.

YONG KI KWON

I am YONG KI KWON's attorney. I have carefully reviewed the above Statement of Facts with him. To my knowledge, his decision to stipulate to these facts is an informed and voluntary one.

Mark MacDougall
Heather Pellegrino
Attorneys for YONG KI KWON

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA)	
)	
v.)	CRIMINAL NO. 03-296-A
)	
YONG KI KWON,)	
)	
Defendant.)	

CRIMINAL INFORMATION

THE UNITED STATES ATTORNEY CHARGES THAT:

In or about April, 2001, in Fairfax, Virginia, the defendant, YONG KI KWON did unlawfully and knowingly use and discharge a firearm during, in relation to, and in furtherance of crimes of violence for which the defendant may be prosecuted in a court of the United States, to wit, YONG KI KWON fired a semi-automatic AK-47-style rifle in relation to and in furtherance of a conspiracy to unlawfully, knowingly, and intentionally begin, provide for, prepare a means for, and take part in military expeditions and enterprises to be carried on from the United States against the territory and dominion of foreign states, districts and peoples with whom the United States was at peace, in violation of Title 18, United States Code, Section 960, all in violation of Title 18, United States Code, Section 924(c).

Paul J. McNulty
United States Attorney

By: _____
Gordon D. Kromberg
David Laufman
Assistant United States Attorneys

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA)	
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v.)	CRIMINAL NO. 03-296-A
)	
YONG KI KWON,)	
)	
Defendant.)	

WAIVER OF INDICTMENT

I, YONG KI KWON, the above named defendant, accused of unlawfully using and discharging a firearm in relation to and in furtherance of a crime of violence, in violation of Title 18, United States Code, Section 924(c), being advised of the nature of the charge, the proposed information, and of my rights, hereby waive in open court prosecution by indictment and consent that the proceeding may be by information rather than by indictment.

Date: _____
YONG KI KWON
Defendant

Mark MacDougall
Heather Pellegrino
Counsel for Defendant

Before: _____
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
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UNITED STATES OF AMERICA)	
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v.)	CRIMINAL NO. 03-296-A
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ORDER DISMISSING COUNTS

_____ Upon motion of the United States of America, pursuant to a plea agreement between defendant YONG KI KWON and the government, in which the defendant appeared before the Court on August 25, 2003 and entered a plea of guilty to Counts 1 and 13 of the indictment, and also to a criminal information, it is hereby

ORDERED that Counts 3, 5, 11, 14, 16, 28, and 34 of the indictment are hereby dismissed with respect to defendant YONG KI KWON only.

LEONIE M. BRINKEMA
UNITED STATES DISTRICT JUDGE

Date: _____
Alexandria, Virginia

I ASK FOR THIS:

Gordon D. Kromberg
Assistant United States Attorney